

Criminal Records Checks

Rhode Island Department of Children, Youth and Families

Policy: 900.0040

Effective Date:

Version: 1

Statewide and nationwide, including fingerprinting, criminal background checks are required for the following individuals in accordance with Federal and State law and Department policy:

- Prospective foster parents and household members, age eighteen (18) or over
- Prospective adoptive parents and household members age eighteen (18) or over
- Prospective residential child care facility operators
- Prospective residential child care facility employees, volunteers and consultants if the individuals are applying for positions that involve supervisory or disciplinary power or involve routine contact with a child or children without the presence of other employees
- Prospective day care center and family day care home owners and operators
- Prospective day care center or family day care home employees, volunteers and consultants if the individuals are applying for positions that involve supervisory or disciplinary power or involve routine contact with a child or children without the presence of other employees
- Prospective child placing agency owners and operators
- Prospective child placing agency employees, volunteers and consultants if the individuals are applying for positions that involve supervisory or disciplinary power or involve routine contact with a child or children without the presence of other employees
- Prospective operators and employees, applying for positions that involve supervisory or disciplinary power or involve routine contact with a child or children without the presence of other employees, of community based programs, which are required to be licensed or certified by the Department
- Prospective Rhode Island Training School employees, volunteers and consultants if the individuals are applying for positions that involve supervisory or disciplinary power or involve routine contact with a child or children without the presence of other employees

Statewide criminal background checks are required for the following individuals:

- Family day care home household members, age eighteen (18) or over
- Respite care providers
- Visiting resources for children receiving DCYF services
- All DCYF employees, interns and volunteers (other than Training School, who require fingerprinting)

Statewide criminal background checks may be required for the following individuals:

- Subjects of reports of child abuse and/or neglect to the Call Floor
- Individuals referred to the Department for services and all adult household members
- Persons who have contact with children receiving DCYF services

An individual subject to a criminal records check may also be required to undergo an employment background check (refer to DCYF Policy 900.0035, Employment Background Checks Facility Operators/Facility Employees; DCYF Policy: 200.0065, Employment Background Checks - Training School) and/or a clearance for substantiated allegations of child abuse and neglect (refer to DCYF Policy 700.0105, Clearance of Agency Activity).

The following Federal and State statutes apply:

- The National Child Protection Act of 1993 [42 U.S.C. 5119] (a) authorizes nationwide criminal records checks to determine if a child care provider has been convicted of a

crime that bears upon the provider's fitness to have responsibility for the safety and well-being of children.

- Federal Law [42 U.S.C. 671] (a) (20) and Regulation [45 CFR 1356.30] relating to ASFA require that the Department cannot approve or license an adoptive home or a foster home if the prospective foster or adoptive parent has been convicted of a felony involving child abuse or neglect, spousal abuse, a crime against a child or children (including child pornography) or a crime involving violence, including rape, sexual assault, or homicide. Further, the Department cannot approve or license an adoptive parent or a foster parent who has, within the last five years, been convicted of a felony involving physical assault, battery or a drug-related offense.
- Rhode Island General Law (RIGL) 14-1-34 requires prospective foster parent to undergo a statewide and nationwide criminal records check. The nationwide criminal records check will be provided to the foster care applicant without charge.
- RIGL 15-7-11 requires prospective adoptive parent to undergo a statewide and nationwide criminal records check. The results are included in the adoption home study report submitted to the Family Court. The Department or the private child placing agency conducting the home study is responsible for all costs relating to the criminal checks.
- RIGL 40-13.2-4 requires that any person seeking to operate a facility which is required to be licensed or registered with the Department shall undergo a nationwide criminal records check.
- RIGL 40-13.2-5 requires that any person seeking employment in any facility which is required to be licensed or registered with the Department or seeking employment at the RI Training School if that employment involves supervisory or disciplinary power over a child or children or involves routine contact with a child or children without the presence of other employees, shall undergo a nationwide criminal records check. The nationwide criminal records check will be provided to the applicant for employment without charge.

The Department has established, in compliance with RIGL 40-13.2, a listing of criminal activity (refer to the attached *Criminal Record Checks Addendum, Disqualifying Information*) which constitutes disqualifying information because that information would indicate that the employment could endanger the health or welfare of a child or children. The arrest and conviction or arrest pending disposition for one of the criminal offenses included in the Criminal Record Checks Addendum disqualifies an applicant from operating or seeking employment in a child care facility, receiving a license or certification to provide care for a child, receiving approval as an adoptive parent, seeking employment at the RI Training School or serving in any other role subject to a criminal background check in accordance with federal and/or state law or DCYF policy. For purposes of this protocol, "conviction" means, in addition to a judgment of conviction entered by a court subsequent to a finding of guilty or a plea of guilty, any instance where the defendant has entered a plea of nolo contendere and has received a sentence of probation and any instance where a defendant has entered into a deferred sentence agreement with the attorney general. Additionally, this Addendum is utilized to carry out the provisions of RIGL 40-13.2-4.1 and 40-13.2-5.1 relating to statewide criminal records checks for youth serving agency operators and employees.

An individual subject to a nationwide criminal records check may apply to the bureau of criminal identification of the state police or the local police department. The check will conform to applicable federal standards including the taking of fingerprints to identify the applicant. If disqualifying information is found, the applicant and, in the case of foster and adoptive parents and facility operators, the Department will be informed in writing of the nature of the disqualifying information. The employer will be informed whether or not disqualifying information exists. If no

disqualifying information is found, both the applicant and the employer and/or the Department will be informed in writing of this fact.

An individual subject to a statewide criminal background check authorizes the Department and/or the employer to process and obtain the results of the statewide BCI check.

RIGL 40-13.2-6 provides that if an applicant for employment has undergone a criminal records check within eighteen (18) months of an application for employment, an employer may request from the bureau of criminal identification of the state police or the local police department, or the attorney general's office for employees of youth serving agencies, a letter indicating if any disqualifying information was discovered. The state or local police bureau of criminal identification or the Attorney General's Office will respond by stating if an item of disqualifying information was discovered without disclosing the nature of the disqualifying information or by stating that no disqualifying information was discovered. The letter may be maintained on file to satisfy the fingerprinting requirements for employment. RIGL 15-7-11 provides that a prospective adoptive parent may not be required to submit to a nationwide criminal records check if he or she has submitted to this check within the previous eighteen (18) months of an application.

An individual who has "appealable" disqualifying information (refer to the attached *Criminal Record Checks Addendum, Disqualifying Information*) is entitled to appeal the denial or revocation of license/certification or denial or termination of employment.

Related Procedures

RI Criminal History System Clearance (Statewide BCI) Completed by DCYF

Criminal Checks on Prospective Foster and Adoptive Parents

Criminal Checks on Prospective Facility Operators and Employees

Criminal Checks on Prospective Employees of the Training School

Appeal of Denial/Revocation of Licensure/Certification or Denial/Termination of Employment

Criminal Record Checks – Addendum, Disqualifying Information

RI Criminal History System Clearance (Statewide BCI) Completed by DCYF

Procedure From Policy 900.0040: Criminal Records Checks

- A. The following individuals, who are not required to undergo nationwide criminal records checks (including fingerprinting), are subject to statewide criminal background checks (BCI).
1. Statewide criminal background checks are required for the following individuals:
 - a. Family day care home household members, age eighteen (18) or over
 - b. Respite care providers
 - c. Visiting resources for children receiving DCYF services
 - d. All DCYF employees, interns and volunteers (other than RI Training School, who require fingerprinting)
 2. Statewide criminal background checks may be required for the following individuals:
 - a. Subjects of reports of child abuse and/or neglect to the Call Floor
 - b. Individuals referred to the Department for services and all adult household members
 - c. Persons who have contact with children receiving DCYF services
- B. An individual, in accordance with this policy, who requires a nationwide criminal records check, including fingerprinting, is also subject to the statewide BCI clearance. Some statewide BCI clearances are completed by DCYF staff and others are completed by the Department of the Attorney General upon the request of a child placing agency or facility operator in accordance with provisions outlined within this rule.
- C. A DCYF staff person is responsible to complete or ensure the completion of any required statewide BCI check relating to his or her work assignments.
1. Designated DCYF staff persons have access to the Rhode Island Criminal History System, through an agreement with the Department of the Attorney General.
 2. DCYF staff person, requiring statewide BCI, who does not have access to the System, submits the DCYF 034, Rhode Island Criminal History System Clearance (BCI) to a designated staff person authorized to access the System.
 3. Authorized staff person, who completes the statewide BCI, documents results on the DCYF 034 and prints and attaches to the DCYF 034 information relating to any suspected matches.
 4. Worker who requested the clearance reviews information to ensure that information relates to the desired person and includes a copy of the results in the DCYF record.
 5. DCYF staff person is prohibited from providing copies of this information to persons outside of the Department. Subjects of BCI clearances who wish copies of clearance results must request a clearance directly from the Department of the Attorney General.

Criminal Records Checks on Prospective Foster and Adoptive Resources

Procedure From Policy 900.0040: Criminal Records Checks

- A. Statewide and nationwide criminal records checks are completed on all prospective foster and adoptive parents and household members over age eighteen (18).
- B. The statewide BCI is completed by designated DCYF staff person and the results are documented on the DCYF #034, RI Criminal History System Clearance (BCI).
 - 1. As part of the initial application process for foster care or adoption licensing, the statewide check is completed by the Foster Care or Adoption Preparation and Support licensing staff person.
 - 2. In the case of an emergency placement of a child in a kinship foster home prior to the completion of the licensing process, the statewide criminal check is completed by the assigned Child Protective Services, Family Services, Juvenile Probation or RI Training School staff person responsible to place the child (refer to Policy 900.0020, Licensing of Foster Homes for specific procedures relating to completing, reviewing and processing this preliminary criminal check).
- C. It is the responsibility of the child placing agency, in the case of a foster or adoptive home licensed through a child placing agency, to ensure that the statewide BCI is completed.
- D. The foster or adoptive applicant or adult household member is instructed (by the DCYF foster care or adoption licensing worker, the DCYF staff person placing the child in a kinship placement on an emergency basis prior to completion of the licensing process or by the child placing agency staff, in the case of a foster or adoptive home licensed through a child placing agency) to apply to the bureau of criminal identification of the state police or the local police department for a nationwide criminal records check, which includes the taking of fingerprints.
 - 1. Applicant is provided with, and brings to law enforcement agency, the DCYF 109A, which includes the **Criminal Records Checks Addendum, Disqualifying Information** and informs the law enforcement agency where results of the check should be sent.
 - 2. The criminal records check is conducted without charge to prospective foster parents or adoptive parents. In the case of prospective adoptive parents, DCYF or the private child placing agency conducting the adoption home study is responsible for all costs relating to the criminal checks.
 - 3. The results of the check are sent to the Department or child placing agency.
 - a. The Department will be provided with details of criminal convictions in addition to being notified that there is disqualifying information (refer to **Criminal Records Checks Addendum, Disqualifying Information**). If the Department receives information regarding a history of non-disqualifying criminal information, this information must be reviewed by supervisor and administrator prior to proceeding with licensing.
 - b. A child placing agency will only be notified whether or not disqualifying information exists.
 - 4. RIGL 15-7-11 provides that an individual applying to be an adoptive parent may not be required to submit to this check if he/she has undergone a nationwide criminal records check, in accordance with a statutory provision referenced below, in the eighteen (18) months prior to the date of application. A letter from the state or local police who completed the nationwide check verifying the date and results of that check shall be acceptable.
 - a. RIGL 14-1-34 (foster parent)

- b. RIGL 40-13.2-2, 40-13.2-4, 40-13.2-5 (child care facility employee or operator)
 - c. RIGL 16-48.1-4, 16-48.1-5 (nursery school operator or employee)
- E. If no disqualifying information has been discovered, DCYF Licensing or child placing agency staff proceeds with the licensing process and places the results of the criminal records check in the applicant's record.
- F. If disqualifying information has been discovered, DCYF Licensing or the child placing agency will immediately notify the applicant and the DCYF Hearing Officer in writing of the denial of licensure.
- G. The notification letter informs the applicant of the right to appeal, if the disqualifying criminal offense is appealable, to the Department's Administrative Hearing Officer.

Criminal Records Checks on Prospective Facility Operators and Employees

Procedure From Policy 900.0040: Criminal Records Checks

A. Facility Owners and Operators

1. Statewide and nationwide criminal records checks are completed on all prospective residential child care facility owners and operators, child placing facility owners and operators, day care center owners and operators, family day care home operators and operators of community based programs requiring DCYF licensing.
2. The statewide BCI is completed by designated DCYF staff person and results are documented on the DCYF #034, RI Criminal History System Clearance (BCI) and included in the DCYF record.
3. The applicant is instructed to apply to the bureau of criminal identification of the state police or the local police department for a nationwide criminal records check, which includes the taking of fingerprints.
 - a. Applicant completes DCYF 108, Employment History Affidavit and DCYF 109, Criminal Records Affidavit for the DCYF record.
 - b. Applicant is provided with and brings to law enforcement agency the DCYF 109A, which includes the **Criminal Records Checks Addendum, Disqualifying Information** and informs the law enforcement agency where results of the check should be sent.
 - c. The results of the check, identifying the nature of the disqualifying information, are sent to the Department.
4. If no disqualifying information has been discovered, Licensing staff proceeds with the licensing process and places the results of the criminal records check in the applicant's record.
5. If disqualifying information has been discovered, Licensing staff will immediately notify the applicant and the DCYF Hearing Officer in writing of the denial of licensure.
6. The notification letter informs the applicant of the right to appeal, if the disqualifying criminal offense is appealable, to the Department's Administrative Hearing Officer.
7. As part of the re-licensing process, DCYF Licensing staff completes a statewide BCI check on the owner/operator and ensures that the Employment History Affidavit (DCYF #108), the Criminal Records Affidavit (DCYF #109) and the written results of the criminal records check are in the DCYF file for each owner/operator.

B. Employees

1. Home day care assistants and individuals providing emergency coverage
 - a. Home day care assistants and individuals providing emergency coverage are subject to statewide and nationwide criminal records checks, including fingerprinting.
 - b. Home day care operator ensures that applicant completes the Employment History Affidavit (DCYF #108) and the Criminal Records Affidavit (DCYF #109) and forwards to DCYF Day Care Licensing.
 - c. Day Care Licensing staff completes statewide BCI check for applicant. Results are documented on the DCYF #034, RI Criminal History System Clearance (BCI) and included in the DCYF record.
 - d. Home day care operator instructs applicant to apply to the bureau of criminal identification of the state police or the local police department for a nationwide criminal records check, which includes the taking of

fingerprints. The nationwide criminal records check is conducted without charge to applicant.

- i. Applicant is provided with, and brings to law enforcement agency, the DCYF 109 A, which includes the **Criminal Records Checks Addendum, Disqualifying Information** and informs the law enforcement agency where results of the check should be sent.
 - ii. The results of the fingerprinting will be sent to the Department, indicating that the applicant does or does not have disqualifying information.
- e. If the home day care operator employs the assistant prior to DCYF receiving the results of the fingerprinting, the following provisions apply:
 - i. The DCYF #108, Employment History Affidavit, the Criminal Records Affidavit (DCYF #109) and DCYF #034, RI Criminal History System Clearance (BCI) (indicating no history of disqualifying information) must be completed and fingerprints taken prior to the applicant beginning the job assignment.
 - ii. Applicant ensures that, prior to starting employment, DCYF Licensing has received written verification that the nationwide criminal records check has been initiated and this documentation shall be placed in the DCYF record.
 - iii. Until the results of the fingerprinting are received by DCYF, the day care assistant shall not have supervisory or disciplinary power or routine contact with child(ren) without the presence of others.
 - iv. Within ninety (90) calendar days of hiring, notice shall be placed in the DCYF record identifying the results of the criminal records check. If notice is not received within ninety (90) days, the applicant shall be relieved of child caring responsibilities.
- f. If no disqualifying information has been discovered, Day Care Licensing staff places the results of the criminal records check in the file of the day care provider.
- g. If disqualifying information has been discovered, Day Care Licensing staff informs the home day care operator that the prospective employee is ineligible for employment, or if already employed, that the employment will be terminated. The applicant/employee is provided with a copy of this notification and informed of his or her right to appeal if there is "appealable" disqualifying information (refer to the attached *Criminal Record Checks Addendum, Disqualifying Information*).
- h. As part of the re-licensing process, DCYF Licensing staff completes a statewide BCI check on home day care assistants, individuals providing emergency coverage and adult household members. Staff ensures that the Employment History Affidavit (DCYF #108), the Criminal Records Affidavit (DCYF #109) and the written results of the criminal records checks are in the DCYF record for home day care staff.

2. Facility Employees

- a. Facility operator must require all persons who are offered employment in positions that involve supervisory or disciplinary power over a child or involve routine contact with a child without the presence of other employees to undergo statewide and nationwide criminal records checks. Department policy requires criminal records checks not only on prospective employees but also volunteers and consultants when their positions involve supervisory or disciplinary power or routine contact with a child without the presence of other employees.
- b. The operator ensures that the Employment History Affidavit (DCYF #108) and the Criminal Records Affidavit (DCYF #109) is completed by the applicant.

- c. The operator instructs the applicant to apply to the bureau of criminal identification of the state police or the local police department for a nationwide criminal records check, which includes the taking of fingerprints. The nationwide criminal records check is conducted without charge to the applicant for employment.
 - i. Applicant is provided with, and brings to law enforcement agency, the DCYF 109 A, which includes the **Criminal Records Checks Addendum, Disqualifying Information** and informs the law enforcement agency where results of the check should be sent.
 - ii. Results of the fingerprinting are sent to the employer, indicating that the applicant does or does not have disqualifying information.
- d. If the facility administrator hires the employee prior to receiving the results of the fingerprinting, the following provisions apply:
 - i. The DCYF #108, Employment History Affidavit, the Criminal Records Affidavit (DCYF #109) and the results of the statewide BCI (indicating no history of disqualifying information) must be completed and fingerprints taken prior to the applicant beginning the job assignment.
 - ii. Applicant ensures that prior to starting employment, the employer has received written verification that the nationwide criminal records check has been initiated and this documentation of fingerprinting shall be placed in the employee's personnel file.
 - iii. Until the results of the fingerprinting are received by the employer, the employee, volunteer or consultant, shall not have supervisory or disciplinary power or routine contact with child(ren) without the presence of others.
 - iv. Within ninety (90) calendar days of hiring, notice shall be placed in the personnel file identifying the results of the criminal records check. If notice is not received within ninety (90) days, the applicant shall be relieved of child caring responsibilities.
- e. Upon receipt of notification that disqualifying information has been discovered, the facility administrator shall immediately notify the applicant that his/her application is rejected or, in the case of an individual who is already employed, that employment will be terminated in ten (10) working days.
 - i. This letter shall inform the employee of his or her right to appeal if there is "appealable" disqualifying information (refer to the attached *Criminal Record Checks Addendum, Disqualifying Information*).
 - ii. A copy of this letter is provided to DCYF Licensing and to the DCYF Hearing Officer.
 - iii. Any notifications by the DCYF Hearing Officer to the Licensing Unit within the context of the appeal process are to be shared by the Licensing staff with the facility administrator.
- f. Certain employees, volunteers or consultants need not undergo the criminal records check if they do not have supervisory or disciplinary power or routine contact with child(ren) without the presence of others. In these situations the facility operator must have certified in writing that this individual has no routine contact with child(ren). A copy of this certification must be filed with the Department's Licensing Unit staff and in the employee's personnel file.
- g. The facility operator's failure to require the criminal records check, in compliance with law or DCYF policy, or failure to maintain the written results of the check or the above referenced certification on file will be grounds to revoke the license or certification of the operator.

Criminal Records Checks - Employees of the Training School

Procedure From Policy 900.0040: Criminal Records Checks

- A. All prospective employees of the RI Training School who are offered employment in positions that involve supervisory or disciplinary power over a child or involve routine contact with a child without the presence of other employees are required to undergo statewide and nationwide (including fingerprinting) criminal records checks. Department policy requires criminal records checks not only on prospective employees but also volunteers and consultants when their positions involve supervisory or disciplinary power or routine contact with a child without the presence of other employees.
- B. Human Resources staff ensures that the prospective employee completes the Criminal Information Section of the Application for Employment at the time of the initial interview.
- C. Human Resources staff completes the statewide BCI check and results are documented on the DCYF #034, RI Criminal History System Clearance (BCI) and included in the personnel file.
- D. Human Resources staff ensures that the Employment History Affidavit (DCYF #108) is completed by the applicant.
- E. Human Resources staff instructs Juvenile Program staff upon acceptance to the training academy and other prospective employees subject to this check upon selection for the position to apply to the bureau of criminal identification of the state police or the local police department for a nationwide criminal records check, which includes the taking of fingerprints. Applicant is provided with, and brings to law enforcement agency, the DCYF 109A, which includes the **Criminal Records Checks Addendum, Disqualifying Information** and informs the law enforcement agency where results of the check should be sent.
- F. The prospective employee forwards to Human Resources prior to starting employment written verification that the nationwide criminal records check has been initiated.
- G. If the prospective employee has undergone a nationwide criminal records check within eighteen (18) months of application for employment, Human Resources may accept a letter from the Bureau of Criminal Identification verifying the date and results of the check (refer to section 3, Prior Nationwide Criminal Checks in the above Procedure: Criminal Checks on Prospective Facility Operators and Employees for details)
- H. If the results of the fingerprinting are not received by Human Resources within sixty (60) calendar days of an individual's employment, the administrator or designee contacts the appropriate bureau of criminal identification requesting the status of the check.
- I. Upon written verification that the criminal records check has been initiated, Human Resources may hire the applicant for a provisional period not to exceed ninety (90) calendar days.
- J. Upon receipt of the results of the criminal records check, Human Resources may take action relative to the employee's continued employment based on the following:
 - 1. If no disqualifying information has been found, both the applicant/employee and the Department will be informed of this fact in writing. The written documentation that the criminal records check was initiated and the results of the criminal records check are maintained in the employee's personnel file.

2. If disqualifying information has been found, the applicant/employee will be informed in writing of the nature of the disqualifying information. The Department will be informed in writing only that disqualifying information has been found.
 - a. Upon receipt of notification that disqualifying information has been discovered, Human Resources immediately notifies the applicant/employee in writing that he/she will not be hired or that his/her employment will be terminated within ten (10) working days. A copy of this letter is provided by Human Resources to the appropriate division head and to the DCYF Hearing Officer.
 - b. The notification letter informs the applicant/employee of the right to appeal if there is "appealable" disqualifying criminal information (refer to the attached *Criminal Record Checks Addendum, Disqualifying Information*).

Appeal of Denial/Revocation of Licensure/Certification or Denial/Termination of Employment

Procedure From Policy 900.0040: Criminal Records Checks

- A. An individual who has “appealable” disqualifying criminal information (refer to the attached *Criminal Record Checks Addendum, Disqualifying Information*) is entitled to appeal the denial or revocation of a license/certification or the denial or termination of employment.
- B. Within thirty (30) days of receipt of an adverse agency decision, the applicant/employee must inform the Department of his or her intent to appeal by filing a DCYF #016, Formal Request for Hearing, with the Department’s Hearing Officer.
 - 1. The applicant/employee must attach a copy of his/her disqualifying information report, which identifies the specific appealable disqualifying offense(s).
 - 2. The applicant/employee must provide written references attesting to the applicant’s long standing record of excellence in child care. Such references must be from individuals who are qualified by virtue of education and/or experience to testify to the abilities of the applicant/employee. Such individuals would include:
 - a. Licensed child care providers
 - b. Current or previous child care professionals
 - c. Other professionals with credentials that would enable them to effectively judge the applicant’s qualifications in providing child care
- C. The Department’s Administrative Hearing Officer reviews the materials submitted on behalf of the applicant/employee and conducts the appeal process and provides a written decision in accordance with timeframes and procedures established in DCYF Policy 100.0055, Complaints and Hearings.
 - 1. If the applicant/employee has not demonstrated a record of excellence in child care sufficient to warrant disregard of the otherwise disqualifying information, the Hearing Officer will uphold the denial, termination or revocation and notify the applicant, employer and DCYF Licensing, if applicable.
 - 2. If the applicant/employee has demonstrated a record of excellence in child care, the Hearing Officer will overturn the rejection based on disqualifying information and notify the applicant, employee and DCYF Licensing, if applicable.

STATE OF RHODE ISLAND
DEPARTMENT OF CHILDREN, YOUTH AND FAMILIES
Criminal Records Checks - Addendum
Disqualifying Information

The arrest and conviction* or arrest pending disposition for one of the criminal offenses listed below disqualifies an individual from serving in a child caring capacity in a program or service operated by or for DCYF and/or requiring licensure or certification by DCYF or residing in a household wherein such a program or service is provided or from owing or operating any such program or service or from serving as a DCYF employee, intern, volunteer or consultant or from functioning in any other capacity subject to a statewide or nationwide criminal background check in accordance with federal and/or state law or DCYF rule.

*For purposes of this protocol, "conviction" means, in addition to a judgment of conviction entered by a court subsequent to a finding of guilty or a plea of guilty, any instance where the defendant has entered a plea of nolo contendere and has received a sentence of probation and any instance where a defendant has entered into a deferred sentence agreement with the attorney general.

Disqualification for any of the following offenses constitutes a non-appealable disqualification:

- Felony Child Abuse or Neglect
- Felony Domestic Violence
- Felony committed against a child
 - Child Pornography
 - Circulation of obscene publications and shows
 - Sale or exhibition to minor of indecent publications, pictures or articles
 - Child nudity in publication
 - Transportation for Indecent purposes
 - Harboring
 - Prostitution
 - Pandering
 - Deriving support or maintenance from prostitution
- Felony Drug Offense committed less than five (5) years ago
- Felony involving violence
 - Murder
 - Manslaughter
 - Rape
 - 1st Degree Sexual Assault
 - 2nd Degree Sexual Assault
 - Kidnapping
 - Car-jacking
 - 1st Degree Arson
 - 2nd Degree Arson
 - Mayhem
 - Felony Assault committed less than five (5) years ago
 - Felony Battery committed less than five (5) years ago

Disqualification for any of the following offenses constitutes an appealable disqualification:

- Felony Assault committed over five (5) years ago
- Felony Battery committed over five (5) years ago
- Felony Drug Offense committed over five (5) years ago
- Robbery
- Breaking and Entering
- Burglary
- Illegal Possession of a Firearm
- Misdemeanor Domestic Assault
- 3rd Degree Sexual Assault

Disqualification for any of the following offenses constitutes an appealable disqualification when the offense does not involve a child:

- Transportation for Indecent purposes
- Harboring
- Prostitution
- Pandering
- Deriving support or maintenance from prostitution
- Circulation of obscene publications and shows

Offenses Against the Person

~~Murder~~

~~Voluntary manslaughter~~

~~Involuntary manslaughter~~

~~Kidnapping~~

~~Kidnapping with intent to extort~~

~~First degree sexual assault~~

~~Second degree sexual assault~~

~~Third degree sexual assault~~

~~Assault by spouse~~

~~Assault with intent to commit specified felonies~~

~~Felony assault~~

~~Domestic assault~~

~~First degree child abuse~~

~~Second degree child abuse~~

Offenses Against the Family

~~Incest~~

~~Child snatching~~

~~Exploitation for commercial or immoral purposes~~

Public Indecency

~~Transportation for indecent purposes: Harboring, Prostitution~~

~~Pandering~~

~~Deriving support or maintenance from prostitution~~

~~Circulation of obscene publications and shows~~

~~Sale or exhibition to minors of indecent publications, pictures or articles~~

~~Child nudity in publication~~

Drug Offenses

~~Any offense constituting a felony which is enumerated in Rhode Island General Law 21-28-1.01 et seq., the Uniform Controlled Substances Act~~

Criminal Records Checks Facility Operators/Facility Employees

Rhode Island Department of Children, Youth and Families

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In accordance with Rhode Island General Law (RIGL) 40-13.2, any person seeking to operate a residential care facility, day care center, or family day care home which is licensed or certified by the Department shall receive a nationwide criminal records check by the Bureau of Criminal Identification. The check will conform to the applicable federal standards including the taking of fingerprints to identify the applicant. Those items of information appearing on the check which constitute disqualifying information have been identified by the Department and will be used in determining whether licensing or certification shall be granted.

RIGL 40-13.2 also mandates those facility operators which are licensed or certified by the Department to require all persons who are offered employment in positions which involve supervisory or disciplinary power over a child(ren) or involve routine contact with a child(ren) without the presence of other employees to receive nationwide criminal records checks. Department policy requires criminal records checks not only on prospective employees but also volunteers and consultants when their positions involve supervisory or disciplinary power or routine contact as described above. The Department assumes responsibility for ensuring criminal records checks for employees of home day care providers.

The results of the criminal records checks are provided to the individual by the Bureau of Criminal Identification with specific disqualifying offense(s) identified in the notification. In the case of individuals applying for licensing or certification, the Department receives written notification from the Bureau of Criminal Identification that the individual does or does not have disqualifying information. Likewise, with reference to employees/potential employees of home day care providers, the Department receives written notification. Disqualifying information is grounds for denying or revoking a license or certification, in the case of employees/potential employees of home day care providers.

An individual who has disqualifying information is entitled to appeal the denial or revocation of license/certification or denial of employment or termination. The Department will review material submitted in compliance with the procedures set forth below and will render a judgment based on the individual's record of excellence in child care.

Related Procedures

Criminal Records Checks on Prospective Facility Operators

Criminal Record Checks Appeal of Denial of Licensure or Certification Based on Disqualifying Information

Criminal Records Checks on Prospective Employees of Home Day Care Providers

Criminal Records Checks on Employees of a Facility

Criminal Record Checks on Prospective Facility Operators

Procedure From Policy 900.0040: Criminal Records Checks Facility Operators/Facility Employees

- A. Prior to licensing or registration with the Department, Community Resources staff requires the prospective operator to apply for a criminal records check:
 - 1. The operator completes the Criminal Records Affidavit (DCYF #109).
 - 2. The operator applies for the criminal records check by contacting the State Police Barracks in Scituate (647-3311), or his/her local police department:
 - a. The operator presents his/her driver's license (or other picture I.D.) to the police.
 - b. The operator has his/her fingerprints taken. The fingerprints are compared to those on file through the National Criminal Identification computer operated by the Federal Bureau of Investigation (FBI).
 - 3. If the prospective operator has undergone a nationwide criminal records check within eighteen (18) months of application for license or registration, the Division of Community Resources may accept a letter from the Bureau of Criminal Identification verifying the date and results of the check.
- B. The Police Bureau of Criminal Identification notifies the Division of Community Resources as to whether the prospective operator possesses disqualifying information:
 - 1. If no disqualifying information has been discovered, Community Resources staff proceeds with the licensing or certification process and places the results of the criminal records check and the Criminal Records Affidavit in the operator's file.
 - 2. If disqualifying information has been discovered, Community Resources staff rejects the application for licensure or certification and informs the applicant in writing. This written notification contains the process to appeal the denial:
 - a. Upon receipt of notification that disqualifying information has been discovered, the Division of Community Resources will immediately notify the applicant in writing of the denial of licensure or certification. A copy of this letter is provided by the Division to the Department's Administrative Hearing Officer.
 - b. The notification letter informs the applicant of the right to appeal.
 - c. Conviction Information – If the employee believes the disqualifying information is incorrect or incomplete in any respect and wishes changes, he/she should make application for challenge to the State Police. Application may also be made directly to the FBI by writing to the Assistant Director of the FBI, Identification Division, Washington, DC 20537.
 - d. Denial of licensure or certification based on disqualifying information may be appealed to the Department's Hearing Officer.

~~Criminal Record Checks Appeal of Denial of Licensure or Certification Based on Disqualifying Information~~

~~Procedure From Policy 900.0040: Criminal Records Checks Facility Operators/Facility Employees~~

- ~~A. Denial may be postponed pending the outcome of the appeal by the Department's Administrative Hearing Officer.~~
- ~~B. Within five (5) working days of receipt of written notification of denial, the applicant must put the Department on notice as to intent to appeal by filing a DCYF #115. The applicant must attach a copy of his/her Bureau of Criminal Identification disqualifying information report which identifies the specific disqualifying offense(s).~~
- ~~C. Within ten (10) working days of submission of the DCYF #115, the applicant must provide written references attesting to the individual's long-standing record of excellence in child care. Such references must be from individuals who are qualified by virtue of education and/or experience to testify as to the abilities of the employee. Such individuals would include:
 - ~~1. Licensed child care providers.~~
 - ~~2. Current or previous child care professionals.~~
 - ~~3. Other professionals with credentials which would enable them to effectively judge the applicant's qualifications in providing child care.~~~~
- ~~D. The Department's Administrative Hearing Officer reviews the materials submitted on behalf of the applicant and rules on the appeal within seventy-two (72) hours of receipt of all materials:
 - ~~1. If the applicant has not demonstrated a record of excellence in child care sufficient to warrant disregard of the otherwise disqualifying information, the Department's Administrative Hearing Officer will uphold the denial and notify the applicant and the Division of Community Resources.~~
 - ~~2. If the applicant has demonstrated a record of excellence in child care, the Department's Administrative Hearing Officer will overturn the rejection based on disqualifying information and so notify the applicant and the Division of Community Resources.~~
 - ~~3. The Department's Administrative Hearing Officer's written decision is provided to the parties identified within.~~~~

~~Criminal Records Checks on Prospective Employees of Home Day Care Providers~~

~~Procedure From Policy 900.0040: Criminal Records Checks Facility Operators/Facility Employees~~

- ~~A. The home day care operator ensures that each prospective employee completes the Criminal Records Affidavit (DCYF #109).~~
- ~~B. The home day care operator forwards the Criminal Records Affidavit to the Division of Community Resources, Day Care Licensing Unit.~~
- ~~C. The home day care operator requests that the prospective employee apply for the criminal records check by contacting the State Police Barracks in Scituate (647-3311) or the local police department.~~
- ~~D. The Police Bureau of Criminal Identification notifies the Division of Community Resources, Day Care Licensing Unit, as to whether the prospective employee possesses disqualifying information:~~
 - ~~1. If no disqualifying information has been discovered, the Division of Community Resources, Day Care Licensing staff, notifies the home day care operator. The operator may proceed with hiring the prospective employee. Community Resources, Day Care Licensing staff places the results of the criminal records check and the Criminal Records Affidavit in the file of the day care provider.~~
 - ~~2. If disqualifying information has been discovered, the Division of Community Resources, Day Care Licensing staff, informs the home day care operator that the prospective employee is ineligible for employment:~~
 - ~~a. Upon receipt of notification that disqualifying information has been discovered, the home day care operator immediately notifies the applicant in writing that his/her application is rejected. A copy of this letter is provided by the operator to the Division of Community Resources, Day Care Licensing staff. The Day Care Licensing staff provides a copy of the letter to the Hearing Officer.~~
 - ~~b. The notification letter informs the employee of the right to appeal. Any notifications by the Hearing Officer to the Division of Community Resources within the context of the appeal process are to be shared by the Day Care Licensing staff with the home day operator.~~

~~Criminal Records Checks on Employees of a Facility~~

~~Procedure From Policy 900.0040: Criminal Records Checks Facility Operators/Facility Employees~~

- A. ~~Upon re-licensure, Licensing Unit staff shall ensure that the Criminal Records Affidavits (DCYF #109) and the written results of the criminal records checks are in the personnel files for individuals in the following positions where the individuals have supervisory or disciplinary power or routine contact with child(ren) without the presence of others.~~
- ~~1. Child care workers~~
 - ~~2. Child care supervisors~~
 - ~~3. Maintenance, transportation, kitchen, clerical workers~~
 - ~~4. Counselors, therapists, social workers, clinicians~~
 - ~~6.5 Teachers, aides, principals~~
 - ~~7.6 Administrators, coordinators, directors~~ Employees of whatever title whether full-time, part-time, volunteers, or consultants.
- B. ~~Certain employees, volunteers, or consultants need not undergo the criminal records check if they do not have supervisory or disciplinary power or routine contact with child(ren) without the presence of others. In these situations the facility operator must have certified in writing that this individual has no routine contact with child(ren). A copy of this certification must be filed with the Department's Community Resources staff and in the employee's personnel file.~~
- C. ~~The facility operator's failure to require the criminal records check (where required) or failure to maintain the Criminal Record Affidavit and the written results of the check or the above referenced certification on file will be grounds to revoke the license or certification of the operator.~~
- D. ~~Expungement of the results of the employee's criminal records check shall be consistent with the facility's policy on expunging the employee's personnel file after termination of employment.~~

~~Criminal Record Checks—Employees of the Training School~~

Policy: 200.0070

Effective Date: January 6, 1986 Revised Date: February 6, 1989 Version: 2

Rhode Island General law (RIGL) 40-13.2 authorizes the Department to receive and review nationwide criminal records checks on those prospective employees of the Training School whose positions would involve supervisory or disciplinary power over juveniles or involve routine contact with juveniles without the presence of other employees. Department policy requires criminal records checks on prospective employees, volunteers, and consultants of the Training School if the individuals are applying for positions which involve supervisory or disciplinary power or involve routine contact as described above.

The criminal records check is received from the state or local police Bureau of Criminal Identification and conforms to the applicable federal standards including the taking of fingerprints to identify the prospective employee. The check consists of a comparison of the prospective employee's fingerprints with those on file through the National Criminal Identification Computer operated by the Federal Bureau of Investigation (FBI). The Department receives written notification from the Bureau of Criminal Identification that the prospective employee does or does not have disqualifying information. The prospective employee's written notification from the Bureau of Criminal Identification delineates the specific disqualifying offense(s). Disqualifying information is grounds for termination of employment.

A prospective employee who has disqualifying information is entitled to appeal the termination or declination of employment. The Department Administrative Hearing Officer will review material submitted in compliance with the procedures set forth below and will render a judgment based on the prospective employee's record of excellence in child care.

The procedures which follow have been developed in accordance with RIGL 40-13.2 and Department policy to ensure the protection and well being of those juveniles who are residents of the Training School.

~~Related Procedures...~~

~~Criminal Record Checks—Employees of the Training School~~
~~Acceptance of the Applicant for Employment~~
~~Appeal of Termination Based on Disqualifying Information~~

~~Related Policies...~~

~~Employment Background Checks—Training School~~
~~Criminal Records Checks for Department Employees~~

~~Criminal Records Checks — Employees of the Training School~~

~~Procedure From Policy 200.0070: Criminal Record Checks — Employees of the Training School~~

~~A. Application for Criminal Records Checks — Prospective Employees:~~

- ~~1. Personnel Office staff ensure that the prospective employee completes the Criminal Information Section of the Application for Employment (CS-14) at the time of the initial interview;~~
- ~~2. Personnel Office staff informs the prospective employee to apply for the criminal records check within a week after the interview. The prospective employee notifies the Personnel Office as to whether he/she will be applying to the state or local police for the check:~~
 - ~~a. The prospective employee makes an appointment to have his/her fingerprints taken by contacting any state police barracks or the local police department within a week after the employment interview;~~
 - ~~b. The prospective employee presents his/her driver's license (picture I.D.) to the Police at the time of the appointment; and~~
 - ~~c. The Police provide the prospective employee with written verification that the criminal records check has been initiated. The applicant forwards the verification to the Personnel Office prior to starting employment.~~
- ~~3. If the prospective employee has undergone a nationwide criminal records check within eighteen (18) months of application for employment, the Personnel Office may accept a letter from the Bureau of Criminal Identification verifying the date and results of the check; and~~
- ~~4. If the prospective employee does not comply with Subsection 2, a, b, and c above he/she will be considered not to be interested in the position.~~

Acceptance of the Applicant for Employment

Procedure From Policy 200.0070: Criminal Record Checks – Employees of the Training School

- A. ~~If the Personnel Office does not receive the results of the criminal records check within sixty (60) calendar days of starting employment, the Chief of Employee and Labor Relations or his/her designee contacts the appropriate Bureau of Criminal Identification requesting the status of the check.~~
- B. ~~After receiving written verification that the criminal records check has been initiated, the Personnel Office may hire the applicant for a provisional period not to exceed ninety (90) calendar days.~~
- C. ~~Upon receipt of the results of the criminal records check from the Bureau of Criminal Identification, the Personnel Office may take action relative to the employee's continued employment based on the following:~~
 - 1. ~~If no disqualifying information has been found, both the employee and the Department will be informed of this fact in writing by the Police. The written evidence that the criminal records check was initiated and the results of the criminal records check are maintained in the employee's personnel file;~~
 - 2. ~~If disqualifying information has been found, the employee will be informed in writing of the nature of the disqualifying information by the Police. The Department will be informed in writing only that information has been found:~~
 - a. ~~Upon receipt of notification that disqualifying information has been discovered, the Personnel Office immediately notifies the employee in writing that his/her employment will be terminated in ten (10) working days. A copy of this letter is provided by the Personnel Office to the appropriate Executive Director and to the Department Administrative Hearing Officer; and~~
 - b. ~~The notification letter informs the employee of the right to appeal. For conviction information, if the employee believes the disqualifying information is incorrect or incomplete in any respect and wishes changes, he/she should make application for challenge to the State Police. Application may also be made directly to the FBI by writing to the of the FBI, Identification Division, Washington, DC 20537.~~

Appeal of Termination Based on Disqualifying Information

Procedure From Policy 200.0070: Criminal Record Checks – Employees of the Training School

- A. Termination of employment may be postponed pending the outcome of an appeal.
- B. Within five (5) working days of receipt of written notification of termination, the employee must put the Department on notice as to intent to appeal by filing a DCYF #115. The employee must attach a copy of his/her Bureau of Criminal Identification disqualifying information report which identifies the specific disqualifying offense(s):
 - 1. The Department Administrative Hearing Officer reviews the material, establishes a file, and awaits receipt of the reference letters described below;
 - 2. If the offense(s) is recent or of a serious nature or such that the Department Administrative Hearing Officer may have serious concerns as to the propriety of continued employment pending results of the appeal, the matter is immediately referred to the Director. The Director decides whether the employee shall remain employed pending the appeal based on the seriousness and date which the offense was committed; and
 - 3. The Department Administrative Hearing Officer provides written notification to the employee, the Personnel Office, and the appropriate Executive Director as to whether the employee shall remain employed pending the appeal.
- C. Within ten (10) working days of submission of the DCYF #115, the employee must provide written references attesting to the employee's long standing record of excellence in child care. Such references must be from individuals who are qualified by virtue of education and/or experience to testify as to the abilities of the employee. Such individuals would include:
 - 1. Licensed child care providers;
 - 2. Current or previous child care professionals; or
 - 3. Other professionals with credentials which would enable them to effectively judge the employee's qualifications in providing child care.
- D. The Department Administrative Hearing Officer reviews the materials submitted on behalf of the employee and rules on the appeal within seventy-two (72) hours of receipt of all materials:
 - 1. If the employee has not demonstrated a record of excellence in child care sufficient to warrant disregard of the otherwise disqualifying information, the Department Administrative Hearing Officer will uphold the termination and notify the employee, the Personnel Office, and the appropriate Executive Director;
 - 2. If the employee has demonstrated a record of excellence in child care, the Department Administrative Hearing Officer will overturn the termination order and will so notify the employee, the Personnel Office, and the appropriate Executive Director; and
 - 3. The Department Administrative Hearing Officer's written decision is provided to the parties identified within (refer to #1 and #2 above) and incorporated into the employee's personnel file.

Addendum – Criminal Records Checks

Disqualifying Information

Information contained in the National Criminal Identification Computer pertaining to conviction or arrest pending disposition for the crimes identified below will result in a letter to the applicant and operator disqualifying the applicant from employment in child-caring facilities.

Offenses Against the Person

Murder
Voluntary manslaughter
Involuntary manslaughter
Kidnapping
Kidnapping with intent to extort
First degree sexual assault
Second degree sexual assault
Third degree sexual assault
Assault by spouse
Assault with intent to commit specified felonies
Felony assault
Domestic assault
First degree child abuse
Second degree child abuse

Offenses Against the Family

Incest
Child snatching
Exploitation for commercial or immoral purposes

Public Indecency

Transportation for indecent purposes: Harboring, Prostitution
Pandering
Deriving support or maintenance from prostitution
Circulation of obscene publications and shows
Sale or exhibition to minors of indecent publications, pictures or articles
Child nudity in publication

Drug Offenses

Any offense constituting a felony which is enumerated in Rhode Island General Law 21-28-1.01 et seq., the Uniform Controlled Substances Act